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The Commonwealth of Massachusetts
Executive Office of Public Safety
Fire Safety Commission

Automatic Sprinkler Appeals Board

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CHAIRMAN

PAUL DONGA
VICE CHAIR

Docket # 2005-95
46 Clinton Street
Chelsea, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD
DECISION AND ORDER

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G1/2, relative to a determination of the Chelsea Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and operated by the Mill Hill Naturalization Club (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 46 Clinton Street, Chelsea, Massachusetts.

B) Procedural History

By written notice dated August 10, 2005, the Chelsea Fire Department issued an Order of Notice to the Appellant informing the facility about the provisions of a new law, M.G.L c. 148, s.26G1/2, which requires the installation of an adequate system of automatic sprinklers in certain buildings or structures. The building subject to the order is located at 46 Clinton Street, Chelsea, Ma. The appellant filed an appeal of said order on August 25, 2005. The Board held a pre-hearing conference relative to this appeal on February 8, 2006. A full hearing before the Board on this appeal was held on April 13, 2006, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was William Barbati and Ray Carsom. Chief Joseph Siewko appeared on behalf of the Chelsea Fire Department.

Present for the Board were: Maurice M. Pilette, Chairperson, Commissioner Kevin P. MacCurtain, Chief Thomas Coulombe, and Alexander MacLeod. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse, or modify the enforcement action of the Chelsea Fire Department relative to the subject building in accordance with the provisions of M.G.L. c. 148, § 26G 1/2?

D) Evidence Received

1. Application for Appeal by Appellant
2. Order of Chelsea Fire Department
3. Notice of Pre-Hearing Status Conference to Appellant
4. Notice of Pre-Hearing Status Conference to Chelsea Fire Dept.
5. Notice of Hearing to Appellant
6. Notice of Hearing to Chelsea Fire Department
7. Certificate of Inspection
8. Photographs (A-G)

E) Subsidiary Findings of Fact

- 1) By Notice dated August 10, 2005, the Chelsea Fire Department issued an Order to the Appellant, requiring the installation of an adequate system of automatic sprinklers in a building located at 46 Clinton Street, Chelsea, MA, in accordance with the provisions of M.G.L. c. 148, s.26G. This building is owned and operated by the Mill Hill Naturalization Club, a private, for profit establishment. The club currently has 94 members. The club is open to members, their families and members' guests.
- 2) The subject building is described by the Appellant as a "private place of assembly for members only." According to the building's Certificate of Inspection, issued on December 12, 2005, the one-story, approximately 50' x 60' steel and cinder block building has a use group classification of "A-3". The building has a total capacity of 325 persons: 260-person capacity in the first floor function and bar area and 65 persons in the basement.
- 3) The function/bar area consists of a large, free flowing area that features a bar with 12 bar seats and large televisions at each end of the bar. High lounge tables and seats are located in the area next to the bar as well as on the other side of the room. Representatives of the Appellant indicated that the facility has a full service liquor license which legally allows service of all kinds of liquors until 2:00 a.m. on weeknights, and 1 a.m. on Saturdays and 2:00 am on Sundays. During many hours of operation, cold cut sandwiches may be purchased at the bar or members can bring in their own food. The lounge features a pool table, various arcade games, and televisions used for keno. The Appellant testified that the facility does not have a stage and does not allow live entertainment at any time.

- 4) The Appellant testified that normal hours of operation are from 12:00 noon until 12:00 midnight on weeknights. On Saturday, the facility operates from 8 a.m. until 12 a.m. A bartender and full bar service is provided during all hours of operation. The Appellant also indicated that club members are each issued card keys for the facility. The keys allow members to access the facility between 10 a.m. and 12 midnight on weeknights, and between 8 a.m. and 12 a.m. on the weekend. Members may not access the facility outside of those hours, as a timer locks the building.
- 5) The Appellants testified that there was at one time a members' only lounge/bar in the basement of the facility, but due to flooding, the first floor is now the members' lounge and the basement is no longer used for any purpose other than storage. The club currently has 94 members. Members, members' families, and their guests who wish to visit the club, may do so accompanied by a member. According to testimony, one guest per member is allowed in the club at a time.
- 6) Appellants asserted that the facility sponsored various social events. Examples of such events include dart tournaments on Tuesday nights and golf league activities on the weekends during the good weather. Following golf league events, club members and golf league members from other teams, adjourn to the facility and enjoy a banquet with a meal, beverages and prizes.
- 7) Representatives of the Appellant stated that all member activities are now conducted in the first floor members lounge and function area. The first floor function area is occasionally rented to individuals who are members or sponsored by a member. However, such rentals are not as often as they once were. During such function activities including rentals, the hall is divided by a temporary removable divider. Non-members frequently attend function events that occur in the area rented out. Such events share the bar and restroom facilities through a door in the divider. The certificate of inspection does not indicate a separate occupancy capacity for each side of the room when the divider is up. The current legal capacity of the combined bar and function hall area is set at 260 persons.
- 8) The Appellant indicated that rental agreements are signed before every event, and include information on the kind of event, the starting and ending times, and the number of people in attendance. The Appellant stated that there is no stage, and usually no live entertainment or bands. However, during some rental events a disc jockey is occasionally hired by the event for dancing purposes. It appears that most of these rental events involve food. Examples of the types of activities that occur when the area is rented included funeral collations, all types of parties and celebrations, sporting banquets and receptions.
- 9) The fire department representative indicated that the Order to install sprinklers was based upon the overall building capacity of 100 persons or over and the existence of a liquor license and the regular use of bar/lounge- type accommodations and service. The Chelsea Fire Chief did not contest the factual characteristics of the building, including its use and description as presented by the Appellants. The Chief also indicated that despite efforts

of the facility to lower the occupancy limits, the City of Chelsea did not want to lower the limits to prevent the basement level from being used again.

- 10) The representatives of the Appellant testified that it would be a financial burden for the club to install a sprinkler system. They indicated that preliminary oral estimates to install such an adequate system ranged between \$25, 000.-\$30,000 . The appellant failed to provide any documentation to support the cost estimate. No alternative or modified sprinkler installation information was provided for the Board's consideration.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of the 2nd paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part states: “every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code”. The law was effective as of November 15, 2004.
- 2) The statutory timeline for said sprinkler installation, in accordance with the provisions of section 11, St. 2004, c.304, requires the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 3) In a memorandum dated January 10, 2005, this Board issued an interpretive guidance document relative to the provisions of this new law found in c.148, s.26G1/2. This law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire, which took place in February 2003. In said memorandum, this Board acknowledged that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes”. However, the board noted that the terms “nightclub” and “dance hall” are used within the A-2 use group classification found in the 6th Edition of the Massachusetts Building Code, 780 CMR 303.3. This use group definition was drafted from nationally recognized model building code language. The commentary documents relating to the A-2 use group definitions used in the nationally recognized model code, indicates that such classification includes occupancies in which people congregate in high densities for social entertainment purposes. Examples given in the commentary are: dancehalls, nightclubs, cabarets, beer gardens, drinking establishments, discotheques and other similar facilities. The commentary concluded that the uniqueness of these occupancies is characterized, but not limited to, the following factors:
 - a) No theatrical stage accessories other than raised platform;
 - b) Low lighting levels;
 - c) Entertainment by a live band or recorded music generating above-normal sound levels;

- d) Later-than-average operating hours;
- e) Tables and seating arranged or positioned so as to create ill defined aisles;
- f) A specific area designated for dancing;
- g) Service facilities primarily for alcoholic beverages with limited food service; and
- h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR , The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s.26G1/2. It was noted that the list of characteristics was not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building at the discretion of the head of the fire department.

- 4) In most cases, determinations of this Board involve an analysis of the use and characteristics of a building to determine whether sufficient “A-2 like” characteristics exist to classify the establishment as a “nightclub” or “dancehall” as the terms are used in M.G.L. c.148, s.26G1/2. It appears that the function hall and bar area was at one time regularly and routinely used for purposes similar to those uses typical of an “A-2 like occupancy” as described above. In recent months however, activities in the function hall/bar area have been curtailed. Additionally, there was testimony indicating that when music (by disc jockey) and dancing occur in the function hall, a meal is also being served. This Board has determined that certain establishments that host or offer “privately organized dining events” that feature a meal as the main attraction may not be required to install a sprinkler system if the establishment meets certain criteria (see ASAB case Docket # 2005-23, 91 Manville Street, Leicester, MA). However, the determination of the head of the fire department in the case now before this Board was not based upon the characteristics as a nightclub or dancehall. The determination was based upon the Appellant operating the building as a “bar”. The provisions of M.G.L. clearly apply to “every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a...bar...”.
- 5) The first floor of this establishment features a wide-open area with no physical or operational separation between that portion used as a bar area and the function hall/activity area. The entire area can clearly and legally operate in a manner typical of a bar or lounge with a capacity of 260 persons. With a minimum of 3,000 s.f. of floor area, the establishment also has the legal potential for concentrated occupancy.
- 6) The facility has a full liquor license and may remain legally open until 2:00 a.m. on most evenings. It routinely and regularly serves all kinds of alcoholic beverages to paying member customers and their guests who may order such beverage with or without a meal. The occasional service of a hot meal on weekends, the availability of a cold sandwiches, “ordering out” for pizza or allowing members to bring in their own meal or snacks, clearly are not the type of characteristics typical of an establishment “principally used...

as a restaurant” and therefore specifically exempt from the law. This establishment features activities, atmosphere and a décor which makes a customer reasonably expect “bar-like” accommodations. Examples of such features in this establishment include a full service bar, with bar tender and bar chairs, several televisions including a “big screen” television, dart games, state sponsored gaming machines and several arcade games. In short, the characteristics of this lounge/function area, as both currently used and designed, are typical of a “bar” with a capacity of over 100 persons.

- 7) Appellant’s argument that the use of this building is limited to “members only” and is therefore not a “public assembly” within the meaning of the statute has no basis in fact or law. There was ample testimony to conclude that organization members, as well as non-member guest (through sponsorship of a member), routinely rent out and/or attend events at this location. Appellant’s argument is similar to the arguments used relative to the statutory prohibition with respect to smoking. However, it appears that such “no smoking” statutes contain specific language, which preclude the application of such law to such private “members only” organizations. However, such an exemption does not exist in M.G.L. c. 148, s.26G1/2. To the contrary, the Board notes that the State Building Code (6th Edition), in section 780 CMR 303.1, dealing generally with Assembly Use Groups, clearly states that such Assembly Use Groups includes: ”All structures which are designed or occupied for the gathering together of persons for the purposes such as civic, social or religious functions...”.

G) DECISION AND ORDER

After a careful review of all the evidence presented and based upon the aforementioned findings and reasoning, the Board hereby determines that the building located at 46 Clinton Street, Chelsea is a public assembly with a legal capacity of 100 or more persons and is currently used or designed as a “bar” within the meaning of the statute. Accordingly, the Order of the Chelsea Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2 is hereby **affirmed**. An adequate sprinkler system shall be installed in accordance with the statutory provisions as follows: (see copy of section 11 of chapter 304 of the Acts of 2004 attached hereto)

1. Complete installation within 3 years of the effective date of the act (by November 15, 2007).
2. The submission of plans and specifications for the installation of sprinklers shall be submitted to the head of the fire department by May 15, 2006 or as otherwise specified by the head of the fire department.

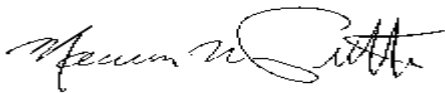
H) Vote of the Board

Maurice Pilette, (Chairperson)	In favor
Kevin P. MacCurtain	In favor
Thomas Coulombe	In favor
Alexander MacLeod	Opposed

I) Right of Appeal

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



Maurice Pilette, P.E. Chairman
Chairperson

Dated: May 18, 2006

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT TO: William Barbati, Mill Hill Naturalization Club, 46 Clinton Street, Chelsea, Massachusetts 02150 **and 1st Class Mail, Postage Pre-paid to:** Chief Joseph Siewko, Chelsea Fire Department, 307 Chestnut Street, Chelsea, Massachusetts 02150.